

JFK ASSASSINATION SYSTEM
IDENTIFICATION FORM

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TO JFK ASSASSINATION RECORDS
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OGC-94-52916
19 September 1994

MEMORANDUM FOR: David P. Holmes
Deputy General Counsel

FROM: Robert J. Eatinger, Jr.
Assistant General Counsel
Litigation Division, OGC

SUBJECT: DCI Sources and Methods Authority With Respect
to JFK Assassination Records

1. Per your request, I have attached a copy of the President John F. Kennedy Assassination Records Collection Act of 1992 (ARCA), Pub. L. 102-526, 106 Stat. 3443-3458, reprinted at 44 U.S.C. § 2107 note. For your convenience, I have highlighted the pertinent provisions that will aid in responding to an inquiry regarding the statute's effect on the DCI's statutory authority to protect intelligence sources and methods.

2. The clear language and intent of the law is to supersede statutes that prohibit disclosure of information, except for some irrelevant subject areas, such as tax records. The statute provides that "it shall take precedence over any other law (except section 6103 of the Internal Revenue Code), judicial decision construing such law, or common law doctrine that would otherwise prohibit" the disclosure of information subject to the Act. ARCA § 11(a). This language, taken with the provisions discussed below which limit the intelligence sources and methods that may be protected and set a strict procedural scheme by which information is to be reviewed under the ARCA, effectively supersedes the DCI's National Security Act authority with respect to intelligence sources and methods information subject to the ARCA.

3. Section 6 of the ARCA provides the grounds for which the release of information may be "postponed." The statute contemplates that all information will eventually be released. Indeed, it specifies that all information will be made available to the public no later than 25 years after the passage of the ARCA (which occurred in October 1992) unless the president certifies that continued postponement is necessary. ARCA § 4(g)(2)(D). With respect to intelligence-related information, ARCA allows postponement if:

"(1) the threat to ... intelligence operations ... is of such gravity that it outweighs the public interest, and such public disclosure would reveal--

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(A) an intelligence agent whose identity currently requires protection;

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or

(C) any other matter currently relating to ... intelligence operations ... the disclosure of which would demonstrably impair the national security of the United States."

ARCA § 6(1) (Emphasis added.)

4. The originating agency is to make the first review to identify information that meets the standards for postponement. ARCA § 4(c)(2)(D)(i). For CIA, this effort is being undertaken by the Historical Review Group, in consultation with the Directorate of Operations and other appropriate Agency components. Information the originating agencies identify for postponement must be transmitted to the Review Board. ARCA § 4(c)(2)(E). The Review Board "shall consider and render decisions on a determination by a Government office to seek to postpone the disclosure of assassination records." ARCA § 7(i)(1). Specifically, the "Review Board shall consider and render decisions on ... whether an assassination record or particular information in a record qualifies for postponement of disclosure under the Act." ARCA § 7(i)(2)(B).

5. If the Review Board determines to order the disclosure of information that the originating agency felt met the criteria for postponement, it "shall notify the head of the originating body of its determination and publish a copy of the determination in the Federal Register within 14 days after the determination is made." ARCA § 9(c)(4)(A). If the information contained in an assassination record is "obtained or developed solely within the executive branch, the President shall have the sole and nondelegable authority to require the disclosure or postponement of ... the information under the standards set forth in Section 6." ARCA § 9(d)(1) (emphasis added). The President's decision must be certified to the Review Board within 30 days of the Review Boards determination. Id. Records postponed by the President must be re-reviewed every 5 years. ARCA § 9(d)(2).

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6. I would be happy to discuss this further if you so
desire. You might also want to contact John Pereira (x30373)
since he has met with some or all of the Review Board members.



Robert J. Etinger, Jr.

Attachment

SUBJECT: DCI Sources and Methods Authority w/Respect
to JFK Assassination Records

OGC-94-52916

DCI/OGC/RJEatinger:76105 (19 Sept 94)

Original - Addressee (w/attach) (hand delivered)

1 - OGC Registry (w/attach)
1 - Lit File _____
1 - RBB (OGC/ILD)
1 - C/HRG (J.Pereira-404 Ames)
1 - RJE - Soft File (w/attach)
1 - RJE - Signer
1 - PDP
1 - KK - fyi
1 - PAS - fyi